

Remarks

This Amendment is in response to the Office Action dated **August 21, 2008**.

Allowed Subject Matter

Claims 33-37 are allowed.

Rejections

35 U.S.C. §112

Claims 38-43 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is asserted “[i]n claim 38, the general structure has the character ‘y’ which is not defined in the claim or the specification and since such character can have numerous values it is unclear to the Examiner would the applicant is claiming.” Office Action, page 2, par. no. 2.

Applicant has amended the specification and claim 38 to recite that “y, m and n are positive numbers”. No new matter has been added. The fact that the y group is shown present in the structure (see pages 2-3 and 5) is indicative that y would be a positive number.

It is asserted with respect to claims 39-43 that:

The term “lower” in claim 39 lines 5-6 and 10-11 is a relative term which renders the claim indefinite. The term “lower” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term lower is a relative term and without any reference value it can read on a variety of values depending on the person interpreting the claim therefore the claim is indefinite.

Office Action, page 2, par. no. 3

Applicant traverses the rejection with respect to claims 39-43.

The use of a relative term such as “lower” by itself does not render a claim indefinite, but rather, its acceptability is based on whether or not those of ordinary skill in the art would be apprised of what is claimed:

When a term of degree is presented in a claim, first a determination is to be made as to whether the specification provides some standard for measuring that degree. If it does not, a determination is made as to whether one of ordinary skill in the art, in view of the prior art and the status of the art, would be nevertheless reasonably apprised of the scope of the invention.

MPEP 2173.05(b)

Applicant submits that in this instance, they would.

The use of the term “lower” to describe alkyl groups is a well known and well used term within the chemical arts.

Applicant conducted a search of the US PTO website for the use of the term “lower alkyl” in claims and got 35,447 hits:

Searching US Patent Collection...

Results of Search in US Patent Collection db for:

ACLM/"lower alkyl": 35447 patents.

Hits 1 through 50 out of 35447

Applicant submits that this is sufficient evidence that this term is widely used and that one of ordinary skill in the art understands the meaning of the term and would therefore be apprised of the scope of the invention.

Applicant respectfully requests withdrawal of the rejection of claims 38-43 under 35 U.S.C. §112, second paragraph.

CONCLUSION

Claims 33-43 are pending in the application. Applicant has addressed each of the issues presented in the Office Action and respectfully request reconsideration. Should any issues remain, the attorney of record may be reached at (952)563-3011 to expedite prosecution of this application. An early allowance of the claims as presented is respectfully requested.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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By: /Lisa Ryan-Lindquist/
Lisa R. Lindquist
Registration No.: 43071

6640 Shady Oak Dr., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001